Question#:	1
Topic:	fee
Hearing:	The DREAM Act
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing I asked you where the funds would originate from to implement this bill. You stated, "I believe there's … a fee mechanism in the bill..." However, S. 952 does not designate a fee that will be charged to each person who seeks to apply for the Dream Act.

What will the fee be for each petitioner? Please be as specific as possible.

Response: The fee amount charged to each petitioner will be tied to the requirements as outlined in the final legislative language. DHS cannot set a precise fee given that the costs could vary significantly depending on the specific legislative requirements and associated deadlines.

Most immigration petition and application fees are not set legislatively. Rather, §286(m) of the Immigration and Nationality Act provides that "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services." Accordingly, I would expect that USCIS will set the fees for processing applications under the DREAM Act to fully recover the processing costs in accordance with this provision, as it does with other applications and petitions.

Question: On what grounds will the Department waive that fee? Please be as specific as possible.

Response: Please see response to question above regarding fee setting. Should USCIS allow for fee waivers, a basis of that fee waiver request and subsequent adjudication could be the applicant's inability to afford to pay the fee. The guidance for that type of waiver request is documented in the USCIS Form I-912, Request for Fee Waiver, and associated instructions to that form.

Question: What are the Department's estimates for how many people would apply? Of that number, how many is estimated to receive "conditional" legal permanent resident status? How many would successfully remove the conditional status?

Response: The Department has not developed an independent estimate for how many people might apply. However, multiple public third party assessments do exist regarding the number of applicants who might apply under a similar scenario.

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For example, in July 2010 the Migration Policy Institute (MPI) conducted an assessment of the DREAM Act bill as introduced by Senator Durbin and Rep. Howard Berman in March 2009 which has similar provisions to S. 952.

An estimation of the number of individuals who could successfully remove the conditional status involves multiple variables. DHS is not aware of any current reliable estimate upon which to base that calculation.

Question: How many new employees will the Department need to hire in order to adequately handle the millions who would petition under the Dream Act?

Response: USCIS has not made any final determination of the number of new employees, if any, that would be needed to adjudicate applications filed under the DREAM Act.

Question: Do you think the taxpayers should have to pay for any portion of the legislation's implementation?

Response: With limited exception, USCIS is a fee-funded agency. As a fee-funded agency, USCIS recovers the full cost of agency operations from application filing fees. USCIS receives appropriated funds only for specific programs. At a minimum, an application fee under the DREAM Act would be set so as to cover all administration and operating costs.

Question: Does the Department have an implementation plan should the Dream Act be enacted? If so, would you please provide it to the Committee?

Response: The Department has not finalized any implementation plan for the DREAM Act. However, as with other potential legislation affecting the Department, DHS is monitoring the bill's progress and will review the operational readiness of its implementing agencies – including USCIS – when appropriate.

Question#:	2
Topic:	documents
Hearing:	The DREAM Act
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: As I stated at the hearing, the legislation broadly allows the Secretary to set forth the manner in which those seeking benefit under the Dream Act to apply. One requirement is the undocumented person must initially enter the U.S. before the age of 16 and be 35 years or younger on the date of enactment. As you know, many countries do not keep accurate records of birth and fraudulent documents are rampant.

What documents will you require to determine age?

Response: Under the scenario stated at the hearing, DHS would require a copy of the individual's foreign birth certificate or secondary evidence that meets the provisions of 8 C.F.R. 103.2(b)(2), the existing regulation governing the submission of evidence in support of applications. As is customary with other applications, USCIS would refer to the Department of State's Foreign Affairs Manual (FAM) to assess documentary evidence from the individual's country.

It is essential to identify suspect cases as early in the process as possible, ideally before the application or petition reaches an adjudicator for decision making, and, most certainly, before an applicant or beneficiary is accorded a benefit that will enable him or her to enter or stay in the United States.

Depending on the final language of the legislation, and upon implementing that legislation, USCIS will develop and provide guidance to officers and staff who process applications under this program. Such guidance will include information regarding general fraud indicators, any fraud indicators specific to this program that can be identified, and instructions on how to treat cases where any fraud indicators are found. Where appropriate, cases of suspected fraud will be referred to USCIS Fraud Detection and National Security (FDNS) units for administrative investigations. In accordance with the existing USCIS-ICE anti-fraud strategy, FDNS will refer cases meeting certain criteria to ICE for criminal investigation.

Where document fraud is suspected, and where possible, FDNS will seek to verify the document. Where foreign documents are suspect, USCIS may engage overseas assets to verify the authenticity of documents. Depending on the nature and volume of documents suspected, USCIS may also engage ICE's Forensic Document Laboratory (FDL) in determining whether documents are fraudulent. More generally, the FDL can provide valuable background on the families of documents that are encountered (e.g. birth certificates, education documents, or national identification cards issued by authorities in

Question#:	2
Topic:	documents
Hearing:	The DREAM Act
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

certain countries during certain times) and the reliability of those documents for establishing identity.

Question: How will you determine when the undocumented person actually entered the United States?

Response: The provisions of S. 952 currently require proof that the applicant has been continuously present in the United States for the 5 years immediately prior to the enactment of the legislation. Once the legislation is enacted, USCIS would review the requirements of the final legislation and based on its extensive experience implementing other programs, the agency would issue regulations setting forth appropriate and reliable criteria to verify the applicant's entry into the United States.

Question: Will you set forth specific documents required to prove date of entry? If so, what will they be?

Response: USCIS has not yet determined which documents may be required of an undocumented person who entered the United States, but once the legislation is enacted, USCIS would issue regulations setting forth appropriate documentation procedures.

Question#:	3
Topic:	deferred action
Hearing:	The DREAM Act
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: You also stated your willingness to discuss a process for the Department to inform the Committee of every instance in which a DREAM Act-eligible person is granted deferred action.

Please provide the Committee, to date as well as going forward, a monthly report of those who apply for, or otherwise seek deferred action as well as the number who have and continue to be granted such relief.

Deferred action is generally valid for up to one year. Under what circumstances would ICE decline to extend or renew deferred action? Has ICE ever terminated, or declined to renew deferred action? If so, please describe the instance(s).

Response: ICE does not currently track applications for deferred action related to DREAM Act type criteria. However, ICE plans to implement a tracking system in the near future.

Deferred action—a form of prosecutorial discretion—is not a form of relief from removal based on specific, established criteria or exercised on a categorical basis for large classes of aliens. Instead, it is a product of the inherent authority of ICE to decide which cases merit the commitment of our agency's resources. ICE officers, special agents, and attorneys consider every case individually to decide whether, based on the totality of the circumstances, a favorable exercise of prosecutorial discretion is appropriate.

On June 17, 2011, ICE Assistant Secretary John Morton issued a memorandum entitled, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" (Prosecutorial Discretion Memorandum). This memorandum provides guidance to ICE employees concerning the scope and purpose of prosecutorial discretion, which includes deferred action, and describes the factors to consider when exercising prosecutorial discretion.

The Prosecutorial Discretion Memorandum includes a list of factors that ICE officers, special agents, and attorneys should consider in exercising prosecutorial discretion to grant or decline to extend deferred action. Favorable discretionary considerations include, for example, whether an alien is a veteran or related to a military service member, came to the United States at a young age, has graduated from a U.S. high school, or has pursued or is pursuing a college education. The Prosecutorial Discretion

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Topic:	deferred action
Hearing:	The DREAM Act
Primary:	The Honorable Charles E. Grassley
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Memorandum also identifies negative factors, including the existence of a criminal history or evidence of risk to the national security of the United States. While many of the factors set forth in the Prosecutorial Discretion Memorandum were already considered by ICE officers, special agents, and attorneys when exercising prosecutorial discretion prior to the issuance of the June 17, 2011 memorandum, the Prosecutorial Discretion Memorandum provides for a more uniform and consistent consideration of these factors when reviewing a prosecutorial discretion request.

Question#:	4
Topic:	parents
Hearing:	The DREAM Act
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Under the bill, beneficiaries, who came to this country through no fault of their own, would be able to petition for the parents who brought them here.

Would you support an amendment barring those responsible for the illegal entry/overstay in which their child(ren) would benefit?

If so, how can this be accomplished legislatively and administratively?

Response: As I recently stated, the DREAM Act is a priority for this Administration and is important to both the mission of the Department of Homeland Security and to the nation as a whole. Both the President and I strongly support the DREAM Act and will continue to encourage Congress to pass this important piece of legislation. Once the legislation is taken up by the Senate and amendments are offered, the Department would be open to reviewing any proposed legislative language that the Senator would offer and, upon review, offer our perspective on this issue.

Question#:	5
Topic:	Brian Terry
Hearing:	The DREAM Act
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: At the Homeland Security oversight hearing before the full Committee on March 9, I asked you about allegations that Border Patrol Agent Brian Terry's unit was under a standing order to use non-lethal force prior deadly force. That order allegedly was given by the Tucson Sector Chief at the time in response to outrage from Mexico over a June 2010 shooting that left a 15-year-old Mexican boy dead. In December 2010, the Sector Chief was transferred from the Tucson Sector just 9 months after he took the post, making it the shortest tenure for a chief of that sector since 1955. After your testimony on March 9, the Border Patrol provided us with a briefing about the use of force policy, but failed to provide personnel able to answer any questions about that local order. We were told we would receive a briefing by individuals more knowledgeable about the matter, but never received it.

Will you commit to providing my staff with that briefing?

Response: As stated in my response letter to you on March 11, 2011, CBP law enforcement personnel have never been ordered – now or in the past – to use less-lethal devices before using deadly force.

The U.S. Border Patrol provides less-lethal devices to its agents to assist in responding to a wide variety of threats faced in field settings. The U.S. Border Patrol Tactical Unit (BORTAC) provides additional devices, both lethal and less lethal, to its agents to ensure they have the capability to respond to a myriad of threats when conducting tactical operations in both rural and urban settings. The decision to deploy these types of devices rests with the agents in the field and is dependent upon the situation present at the time of any encounter.

Question: Has any Department official issued any informal or formal "gag order" or command to employees to persuade them not to speak to Congress?

Response: The Department of Homeland Security does not issue formal or informal gag orders or commands to employees to persuade them not to speak to Congress. While there exist internal Departmental policies that govern agency relations with Congress, the offices and components of DHS, acting through their legislative/congressional affairs offices, are encouraged to be as transparent as possible to matters of Congressional concern.

Question#:	5
Topic:	Brian Terry
Hearing:	The DREAM Act
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Is Agent Terry's unit under a gag order, or are they free to speak to Congressional investigators?

Response: The Department of Homeland Security does not issue formal or informal gag orders. While there exist internal Departmental policies that govern agency relations with Congress, the offices and components of DHS, acting through their legislative/congressional affairs offices, are encouraged to be as transparent as possible to matters of Congressional concern.